

The National Security Archive

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APPROVED FOR
RELEASE DATE:
29-Apr-2009

October 30, 2003

By Facsimile (703) 613-3020/(703) 613-3007 and First Class Mail

Herbert O. Briick
Chief, Information, Review & Release Group
Information Management Services
Central Intelligence Agency
Washington, DC 20505

Robert Herman
Information and Privacy Coordinator
Information Management Services
Central Intelligence Agency
Washington, DC 20505

Dear Gentlemen:

Thank you once again for meeting with the National Security Archive in August to discuss our concerns about Freedom of Information Act processing at the Central Intelligence Agency ("CIA"). We feel certain that progress can be made on a number of the issues that we identified during our meeting and I look forward to following up with you on these matters.

The purpose of this letter is to follow up with you regarding old FOIA requests that remain pending despite the passage of over 10 years. Previously, the Archive provided you with a list of requests that our analysts submitted prior to 1990 and that our records show as "open" requests. I appreciate the CIA's efforts to research the status of these requests. We agreed at our meeting in August that the Archive would respond to the CIA's description of the status of these requests in the hope that any administrative obstacles can be resolved and the requests will finally be processed. As part of this, the Archive agreed also to designate any requests that the Archive is willing to close. Further, we discussed conducting a similar process regarding requests that the Archive submitted from 1990-1995, from 1995-2000 and so on.

Before getting into the details of the specific requests, I do want to clear up one misconception related to the age of these requests. At our meeting, it was speculated by Agency representatives that the Archive had closed and then reopened several of these requests, and therefore that the requests could not be categorized as pre-1990. From the Archive's perspective these requests were unilaterally closed by the CIA and then reopened 2-4 years later after the Archive was successful in establishing its status as a representative of the news media. Regardless, whether the requests are 11 or 15 years old, they have still been pending too long from the perspective of the Archive and, I am sure, the CIA as well.

Accordingly, it appears from a comparison of the CIA's summary of the open requests, that we are both in agreement that the following requests are open and that a response from the CIA is long overdue:

<u>Requester</u>	<u>CIA No.</u>	<u>Status Per CIA</u>
Thomas Svolos	F87-0689/F90-1370	Cancelled (6/23/87); Reopened (9/21/90)
Kenneth Mokoena	F87-1218/F90-1590	Open Appeal (11/10/99)
Peter Kornbluh	F88-0295/F92-1609	Cancelled (4/18/88); Reopened (8/10/92)
Laurence Chang	F88-0542/F90-01884	Cancelled (5/18/88); Reopened (11/28/90)
Scott Armstrong	F89-1505/ F92-01610	Cancelled (11/28/89); Reopened (8/10/92)
Peter Kornbluh	F89-1132/F92-0896	Cancelled (8/7/89); Reopened (5/1/92)

With this letter, we agree to close the following requests that appear on the list above:

<u>Requester</u>	<u>CIA No.</u>	<u>Status Per CIA</u>
Peter Kornbluh	F88-0295/F92-1609	Cancelled (4/18/88); Reopened (8/10/92)
Laurence Chang	F88-0542/F90-01884	Cancelled (5/18/88); Reopened (11/28/90)

We would appreciate if you could determine the status of the processing of the remaining open requests and provide an estimate of when we can expect a response.

In addition, we initially included in our list of open cases several requests that your records showed as cancelled or closed. To the extent you are waiting for a response from the Archive concerning these cases, we agree not to pursue the following requests any further:

<u>Requester</u>	<u>CIA No.</u>	<u>Status Per CIA</u>
Quinlin Shea	F86-1367	Cancelled (12/15/86)
Lisa Richey	F88-0792	Referred (7/13/88)
Kenneth Mokoena/Steven Galster	F88-0882	Cancelled (8/9/88)
Scott Armstrong	F89-0843	Referred (8/1/89)

In addition to those listed above, we had inquired about the status of a number of appeals of requests filed by Scott Armstrong. You indicated that these are either cancelled or closed, but that one of the requests has been superseded by F91-1190. We wish to continue to pursue that one, which you indicated remains open, but will not dispute the cancellation or closing of the other matters.

There are, however, a couple of requests on which our records do not agree and that we still wish to pursue. Each is discussed separately:

Request No. F90-1865 (originally F88-0583) was submitted by Laurence Chang. The Agency released four records with redactions on January 3, 1991 and indicated that the fifth record was not searchable in the CIA's records system. On January 31, 1992, an appeal of the excisions was submitted by the Archive and our records show that no response to the appeal has been received. I have enclosed the relevant correspondence for your consideration. Attachment A. *We request, therefore, that you process the appeal.*

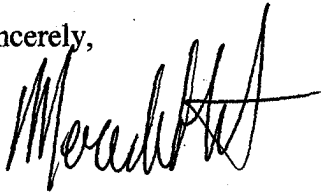
Letter of October 30, 2003
To Herbert O. Brick and Robert Herman
Page 3 of 3

Request No. F92-0802 (originally F89-1133) was submitted by Peter Kornbluh. According to our records, the Agency found the request searchable on August 14, 1989, but suspended it pending resolution of the fee dispute. Our records further indicate that the Agency reopened the request on May 27, 1992. Our records show no further correspondence received from the Agency. Your summary of open cases provided in August, however, shows "NRL 4-2-99." The Archive has no record of receiving correspondence from the Agency concerning this request that is dated April 2, 1999. *We request, therefore, that you send a copy of the denial letter and permit the Archive an opportunity to exercise its administrative appeal rights regarding this request.*

Archive analysts have noted many recent improvements in the CIA's processing of FOIA requests, particularly more recent requests that were responded to within reasonable timeframes. Moreover, the Agency's efforts to improve its transparency in the 1990s have had a positive impact on the work of scholars and researchers seeking to document the role of the CIA in U.S. history. While we understand that older records may provide challenges to the agency, delaying responding to these requests will not make that challenge disappear. Because several of the open requests discussed in this letter were acknowledged by the CIA when it responded on March 27, 2003 to the Archive's FOIA request for the Ten Oldest Pending FOIA Requests, we assume they are not technically "lost" in the system. Yet, nonetheless, the CIA clearly has failed, without any explanation, to meet the 20-day statutory time limit set forth in the FOIA. 5 U.S.C. § 552(a)(6)(A)(i). This constitutes an inexcusable delay. "[A]n agency's failure to comply with the FOIA's time limits is, by itself, a violation of the FOIA, and is an improper withholding of the requested documents." Gilmore v. United States Dep't of Energy, 33 F. Supp.2d 1184, 1187 (N.D. Ca. 1998). These are delays that not even a court applying Open America v. Watergate Special Prosecution Taskforce, 547 F.2d 605 (D.C. Cir. 1976), could countenance, for to do so would vitiate any practical utility associated with using FOIA. Furthermore, a lengthy time extension is not an appropriate option at this point in light of the many years that have already passed. See Hayden v. Department of Justice, 413 F. Supp. 1285, 1289 (D. D.C. 1976) (FOIA time extension provisions are "not intended to convert the federal courthouse into a haven of refuge from the time pressures of the Act, where stringent legal requirements are finally subordinated to administrative convenience.") The records discussed above should be processed and promptly provided.

I am happy to discuss these matters further at your convenience, and will follow up with a telephone call next week. Please feel free to contact me directly at 202-994-7059.

Sincerely,



Meredith Fuchs
General Counsel

cc: Alan Tate, Information Management Services
Central Intelligence Agency

Thomas Blanton, Director
Barbara Elias, FOIA Coordinator
The National Security Archive

880621 C1AD66

The National Security Archive

Documenting U.S. Foreign Policy

A Project of the Fund for Peace

January 31, 1992

John E. Ruthrauff
Executive Director

Thomas S. Blanton
Deputy Director

Malcolm Byrne
Director of Analysis

Linda M. Futato
Director of Marketing

Margaret S. Studemeister
Director of Publications

Sheryl L. Walter, Esq.
General Counsel

John H. Wright
Information and Privacy Coordinator
Office of Information and Privacy
Central Intelligence Agency
Washington DC 20505

RE: Freedom of Information Act Request No. F90-1865

Dear Mr. Wright:

This letter constitutes an administrative appeal under the Freedom of Information Act, 5 U.S.C. Sec. 552 (a)(6). By letter dated December 3, 1991, 4 documents were withheld in part under the (b)(1) exemption.

With respect to the material withheld on the basis of (b)(1), I ask that it be reviewed again to ensure that current classification is indeed warranted and that all reasonably segregable portions of each document are released. It seems likely to us that the documents contain factual and descriptive information which can be reasonably segregated--at a minimum, the titles, authors, destination, and dates and internal subdivision headings of the documents themselves.

We look forward to receiving a prompt decision on this appeal. If you have any questions, or believe that a discussion of this matter would be beneficial, please contact me at the number below.

Sincerely,



Lynda Davis
FOIA Coordinator

Central Intelligence Agency



Washington, D.C. 20505

880621C1A 066

03 DEC 1991

Mr. Laurence Chang
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED DEC 11 1991

Reference: F90-1865

Dear Mr. Chang:

This is in final response to your Freedom of Information Act (FOIA) request for the following records:

1. Information Report dated 9/1/62 and entitled, "Planned Uprising of Counterrevolutionary Groups" (in Cuba). 3 pages, number TDCSDB-3/651,250. Classified secret.
2. Information Report dated 8/31/62 and entitled, "Alleged Plan for General Uprising in Cuba." 3 pages, number TDCSDB-3/651,239. Classified secret.
3. Information Report dated 8/28/62 and entitled, "Planned Uprising of Counterrevolutionary Groups" (in Cuba). 3 pages, number TDCSDB-3/651,184. Classified secret.
4. Information Report dated 8/28/62 and entitled, "Possible Counterrevolutionary Uprisings in Cuba at the End of August." 3 pages, number TDCSDB-3/651,176. Classified secret.

In our acceptance letter to you we explained that the 5th item of your request, an unserialized OCI paper entitled, "Cuban Situation," 15 pages, classified secret, is not searchable in our records systems without additional information.

This request was processed in accordance with the provisions of the FOIA, 5 U.S.C. §552, as amended, and the CIA Information Act, 50 U.S.C. §431. Our search was for the documents described above in existence as of and through the date of our acceptance letter, 26 December 1990. In accordance with our acceptance letter, fees for this request have been waived.

We have completed a thorough search and have located four documents responsive to your request.

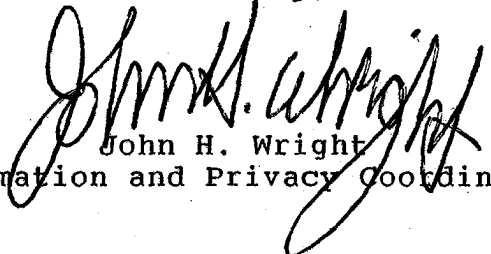
Enclosed, Tab A, are copies of documents 1-3. These documents are being released to you as they have been released to previous requesters.

Enclosed, Tab B, is a sanitized copy of document number 4. Deletions have been made on the basis of FOIA exemptions (b)(1) and (b)(3). An explanation of FOIA exemptions is also enclosed.

The CIA official responsible for these determinations is John H. Wright, Information and Privacy Coordinator. You may appeal the decision regarding document number 4 by addressing your appeal to the CIA Information Review Committee, in my care. Should you choose to do this, please explain the basis of your appeal.

We have appreciated your patience and understanding during the time required for consideration of this request.

Sincerely,


John H. Wright
Information and Privacy Coordinator

Enclosures



The National Security Archive

A Project of the Fund for Peace

Executive Director
John Ruthrauff

January 24, 1991

John H. Wright
Information & Privacy Coordinator
Central Intelligence Agency
Washington D.C. 20505

Reference: F88-0583 now F90-1865
F88-0542 now F90-1884
F88-0543 now F90-1885

880621C/A 066
880574C/A 063
880566C/A 061

Dear Mr. Wright:

Thank you for your letter regarding the above referenced FOIA requests. We appreciate the fact that you are waiving fees for these particular requests based on the fact that they are likely to produce less than 100 pages of material. However, your denial of our request for a waiver of fees for these requests under the "public understanding" standard is incorrect, as is your failure to grant a fee waiver to us as a representative of the news media.

First, your assertion that "the information [the Archive] seek[s] pertains entirely to Cuba" and your conclusion that the "information requested is not likely to contribute significantly to public understanding of the operations or actions of the U.S. government" is wrong. The information we seek pertains entirely to the U.S. government's assessments of events in Cuba. The documents we seek clearly provide information on the U.S. government's activities and operations which would significantly contribute to public understanding. In fact, absent deposing the authors of the documents we requested, there is no way other than the release of such documents for the public to gain any understanding of the operations and activities of the U.S. government in analyzing and assessing the situation in Cuba.

Second, the re-numbering of our 1988 FOIA requests from 1988 to 1990 implies that you are processing our requests as if they had just arrived at the CIA, instead of in their rightful places in the queue as of 1988. In effect, you seem to be penalizing us for your unlawful denial of waiver of fees under the "representative of the news media" standard, which we requested with the original FOIA request letter. We ask that you immediately restore these requests to their places in the queue which they would have had if you had complied with the law in 1988 and notify us promptly of this action.

Third, as to the Archive's publication plans, we plan to publish document sets related to the subjects of the documents requested. As you may know, the CIA itself has purchased our collection on the Iranian revolution of 1977-80 (12,000 pages of documents on microfiche with a two-volume 1,598-page index and guide). We plan to publish a similar collection on U.S. - Cuban relations. This publication would certainly include the documents we have sought in these requests. Therefore, our eligibility for a fee waiver as a representative of the news media for the above requests is indisputable. As a representative of the news media, we agree to pay all legally assessable copying costs.

Thank you in advance for your expeditious resolution of this matter. In light of the above, we would appreciate the prompt processing of these two year old requests without further delay.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynda Davis". The signature is written in dark ink and is positioned above the typed name.

Lynda Davis
FOIA Coordinator



Washington, D.C. 20505

26 DEC 1990

Mr. Laurence Chang
National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

Reference: F90-1865

RECEIVED JAN 02 1990

Dear Mr. Chang:

Pursuant to the recent District of Columbia District Court decision in National Security Archive v. Central Intelligence Agency, we are initiating the processing of National Security Archive cases held in abeyance pending resolution of fee issues. Your request, formerly F88-0583, has been assigned reference number F90-1865 for identification and tracking purposes.

Specifically, you are requesting the following five documents:

"1) Information Report dated 9/1/62 and entitled, 'Planned Uprising of Counterrevolutionary Groups' (in Cuba). 3 pages, number TDCSDB-3/651,250. Classified secret;

"2) Information Report dated 8/31/62 and entitled, 'Alleged Plan for General Uprising in Cuba.' 3 pages, number TDCSDB-3/651,239. Classified secret;

"3) Information Report dated 8/28/62 and entitled, 'Planned Uprising of Counterrevolutionary Groups' (in Cuba). 3 pages, number TDCSDB-3/651,184;

"4) Information Report dated 8/28/62 and entitled, 'Possible Counterrevolutionary Uprisings in Cuba at the End of August.' 3 pages, number TDCSDB-3/651,176. Classified secret.;

"5) Unserialized OCI paper entitled, 'Cuban Situation.' 15 pages. Classified secret."

With respect to item 5, without further identifying information, e.g., document number, date, etc., this document is not searchable in our records systems.

Concerning your request for a waiver of fees, the Freedom of Information Reform Act, 50 U.S.C. §552(a)(4)(A)(iii), specifically provides that "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [United States] government and is not primarily in the commercial interest of the requester."

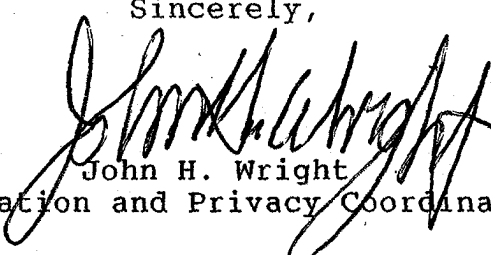
Your request clearly does not meet the criteria established for a waiver of fees under the FOI Reform Act. Inasmuch as the information you seek pertains entirely to Cuba, it is not likely to contribute significantly to public understanding of the operations or activities of the United States Government. Accordingly, in this instance, your request for a fee waiver is denied.

Based on your general statement of intent to publish, you may be eligible for categorization as "representative of the news media." To establish your eligibility in connection with this request, we would normally need from you a detailed statement of your specific publication plans for any material which might be released in response to this particular request. As "representative of the news media," you would be responsible only for copying costs in excess of 100 pages of releasable documents. However, since it seems unlikely that releasable material, if it exists, would exceed 100 pages, we are waiving fees in this particular instance.

Accordingly, we have accepted your request for the documents 1 through 4 as described above; it will be processed in accordance with the Freedom of Information Act, 5 U.S.C. 552, as amended, and the CIA Information Act, 50 U.S.C. 431. Our search will be for documents in existence as of and through the date of this acceptance letter.

The heavy volume of FOIA requests received by the Agency has created delays in processing. Since we cannot respond within the 10 working days stipulated by the Act, you have the right to consider this as a denial and may appeal to the CIA Information Review Committee. It would seem more reasonable, however, to have us continue processing your request and respond as soon as we can. You can appeal any denial of records at that time. Unless we hear from you otherwise, we will assume that you agree, and we will proceed on this basis.

Sincerely,


John H. Wright
Information and Privacy Coordinator



Washington, D.C. 20505

RECEIVED MAY 13 1988

Laurence Chang
The National Security Archive
1755 Massachusetts Avenue, NW
Suite 500
Washington, DC 20036

11 MAY 1988

Reference: F88-0583

Dear Mr. Chang:

This acknowledges receipt of your 29 April 1988 letter, in which you requested documents under the provisions of the Freedom of Information Act (FOIA) on behalf of the National Security Archive. Your request has been assigned reference number F88-0583 for identification purposes.

Specifically, you have requested the following five documents:

1. "Information Report dated 9/1/62 and entitled, 'Planned Uprising of Counterrevolutionary Groups' (in Cuba). 3 pages, number TDCSDB-3/651,250. Classified secret.";
2. "Information Report dated 8/31/62 and entitled, 'Alleged Plan for General Uprising in Cuba.' 3 pages, number TDCSDB-3/651,239. Classified secret.";
3. "Information Report dated 8/28/62 and entitled, 'Planned Uprising of Counterrevolutionary Groups' (in Cuba). 3 pages, number TDCSDB-3/651,184. Classified secret.";
4. "Information Report dated 8/28/62 and entitled, 'Possible Counterrevolutionary Uprisings in Cuba at the End of August.' 3 pages, number TDCSDB-3/651,176. Classified secret."; and,
5. "Unserialized OCI paper entitled, 'Cuban Situation.' 15 pages. Classified secret."

We have determined that your request is searchable in our records systems, and that fees will be involved in this case. Therefore, pending the outcome of Civil Action 88-0501, determination of the National Security Archive's requester category, all action will be suspended on this request. However, if you wish to make, on behalf of the National Security Archive, a firm commitment to pay, without caveat, all search, review, and duplication fees associated with this request, we can begin processing immediately.

Sincerely,

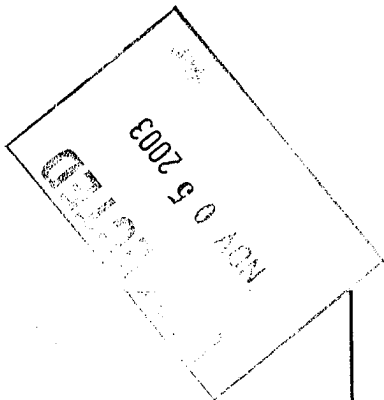
Lee S. Strickland
Information and Privacy Coordinator



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See